

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 96-0648 ST
Sales and Use Tax
For The Tax Periods: 1993 through 1995

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

- I. **Sales/Use Tax – Public Transportation Exemption:** Computers and FAX Equipment used by INDOT Engineers

Authority: IC 6-2.5-2-1, IC 6-2.5-4-1, IC 6-2.5-3-2, Information Bulletin #60

Taxpayer protests the assessment of use tax on purchases of computers and fax equipment used by INDOT engineers.

- II. **Sales/Use Tax – Manufacturing Equipment Exemption:** Rebuilt Transmission for Concrete Trucks

Authority: 45 IAC 2.2-5-8

Taxpayer protests the assessment of use tax on payments made to repair and rebuild the transmissions of concrete trucks.

- III. **Sales/Use Tax – Purchase for Resale:** Promotional Brochures Provided as part of a Contract with INDOT

Authority: 45 IAC 2.2-5-61, Information Bulletin #60

Taxpayer protests the assessment of use tax on purchases of promotional items used in the business of public transportation.

IV. **Sales/Use Tax – Exemption:** Truck Scale

Authority: IC 6-2.5-2-1

Taxpayer protests the assessment of use tax on a truck scale.

V. **Sales/Use Tax – Casual Sales:** Tri-axle truck

Authority: 45 IAC 2.2-1-1

Taxpayer protests the assessment of use tax on purchase of a Tri-axle truck.

STATEMENT OF FACTS

Taxpayer is in the business of manufacturing asphalt and concrete. Taxpayer also constructs roads and bridges for the state, county and city governments.

I. **Sales/Use Tax – Public Transportation Exemption:** Computers and FAX Equipment used by INDOT Engineers

DISCUSSION

Pursuant to IC 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana. IC 6-2.5-4-1 provides that a retail transaction involves the transfer of tangible personal property. Pursuant to IC 6-2.5-3-2, “an excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.”

Taxpayer purchased computers and FAX equipment to be used at job sites by INDOT engineers. The types and specifications for the computers and other equipment are required by the state and included in taxpayer’s contracts. This equipment is used at each job site and is transported from site to site for use by INDOT engineers. Taxpayer argues that this equipment is for the sole usage by the state; state purchases are exempt and therefore this equipment should be exempt. Information Bulletin #60 states that “utilities, machinery, tools, forms, supplies, equipment or any other items used or consumed by the contractor and which do not become a part of the improvement to real estate are not exempt regardless of the exempt status of the person for whom the contract is performed or the form of contract.”

FINDING

Taxpayer’s protest is denied.

II. **Sales/Use Tax – Manufacturing Equipment Exemption:** Rebuilt Transmission for Concrete Trucks

DISCUSSION

Taxpayer was assessed use tax on the cost to repair two concrete trucks. According to taxpayer, the concrete trucks are used in the building of roads. They are used to produce and pour concrete at the building sites. The transmissions of the two concrete trucks were rebuilt. Concrete trucks are exempt machinery used in the direct production of other tangible personal property. 45 IAC 2.2-5-8(h)(2) provides that “replacement parts, used to replace worn, broken, inoperative, or missing parts or accessories on exempt machinery and equipment, are exempt from tax.

FINDING

Taxpayer’s protest is sustained.

III. **Sales/Use Tax – Purchase for Resale:** Promotional Brochures Provided as part of a Contract with INDOT

DISCUSSION

Taxpayer purchased promotional brochures required by its contract with the state. The specifications for the brochures were made by the state and the brochures were for the state’s use. Taxpayer argues that these purchases are for the sole usage by the state; state purchases are exempt and therefore these purchases should be exempt. 45 IAC 2.2-5-61 states that promotional materials are not exempt from sales/use tax. Furthermore, Information Bulletin #60 states that “utilities, machinery, tools, forms, supplies, equipment or any other items used or consumed by the contractor and which do not become a part of the improvement to real estate are not exempt regardless of the exempt status of the person for whom the contract is performed or the form of contract.”

FINDING

Taxpayer’s protest is denied.

IV. **Sales/Use Tax – Exemption:** Truck Scale

DISCUSSION

Taxpayer was assessed use tax on the purchase of a truck scale that was mistakenly thought to be shipped “to Indiana”. Taxpayer provided documentation that the truck scale was, in fact, sent “to Kentucky” and is not subject to Indiana sales/use tax.

FINDING

Taxpayer’s protest is sustained.

V. **Sales/Use Tax – Casual Sales**: Tri-axle truck

DISCUSSION

Taxpayer argues that its purchase of a Tri-axle truck that was used only on the premises at one of its plants should be exempt as a casual sale. Taxpayer argues that neither the seller, nor the purchaser, is in the business of buying or selling motor vehicles. However, taxpayer's purchase cannot be exempt as a casual sale pursuant to 45 IAC 2.2-1-1, which states:

“The Indiana gross retail tax is not imposed on gross receipts from casual sales except for gross receipts from casual sales of motor vehicles.”

Taxpayer's purchase of the motor vehicle at issue here is subject to tax. Taxpayer argues furthermore, that the truck is not used on the highway and is used only on the premises of one of its plants. Regardless of its use, the truck is still subject to tax.

FINDING

Taxpayer's protest is denied.